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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

DANIEL VICTOR MONTANEZ et al., Plaintiffs and Appellants, v. COUNTY OF LOS ANGELES, Defendant and Respondent.	B205809 (Los Angeles County Super. Ct. No. VC038884)

APPEALS from a judgment of the Superior Court of Los Angeles County, Raul A. Sahagun, Judge. Affirmed.

Jance M. Weberman for Plaintiffs and Appellants.

Manning & Marder, Kass, Ellrod, Ramirez, Kevin H. Louth and Timothy J. Kral for Defendant and Respondent.

INTRODUCTION

Plaintiffs Daniel Victor Montanez and Melissa Montanez appeal from a summary judgment in favor of defendant County of Los Angeles. We affirm.

FACTS

On the night of January 29, 2002, David A. Montanez (David), plaintiff Melissa Montanez (Melissa), and their son, Daniel Victor Montanez (Daniel), were at a U-Haul parking lot at the corner of Beverly and Rosemead Boulevards in Pico Rivera. This area is under the jurisdiction of the Los Angeles County Sheriff's Department. Edward Holguin (Holguin), an off-duty Baldwin Park Police Officer, shot David and Daniel, killing David and seriously wounding Daniel.

Sheriff's deputies arrived at the scene and placed Melissa in the back of a patrol car, telling her that she would be taken to the sheriff's station for questioning. Paramedics arrived and took Daniel to the hospital. The deputies then took Melissa to the station in Pico Rivera.

Deputy Stanley Avila was assisting in the investigation of the shootings. He was advised by Detective Nava that Melissa was a named suspect in a 2001 stabbing in Whittier. She allegedly opened the door of the victim's residence to allow the other suspects to enter, then she watched them assault the victim. Between 3:45 and 4:00 a.m., Deputy Avila placed Melissa under arrest for her part in the 2001 incident.

Deputy Richard J. Ramirez interviewed Melissa at the station at about 4:00 a.m. Also present were Sergeant Rudy Ortega and members of the Officer Involved Shooting Investigation Team, Deputy District Attorney Charles Clay and Investigator Brent Smith. Deputy Ramirez told Melissa that he would not talk to her about the pending attempted murder charge against her, arising out of the 2001 stabbing in Whittier. Rather, the purpose of the interview was to obtain information about the incident earlier that night,

an attempted carjacking and shooting. Deputy Ramirez approached Melissa as a witness to the incident as well as a victim of spousal battery. Melissa had a split lip, for which Sergeant Ortega offered her first aid, but she refused his offer.

Deputy Albert Pelaez interviewed Melissa about the 2001 incident. He obtained a photograph of her and prepared a photographic lineup, which he took to the victim of the 2001 incident. The victim refused to make an identification and told Deputy Pelaez that he did not want to pursue the case or appear in court. Melissa was therefore released from custody at 2:30 p.m. on January 30, 2002.

Daniel had passed out at the scene when paramedics placed a mask over his face. He awoke in a hospital bed at the Los Angeles County Medical Center, with a back brace on and numerous tubes attached to him. Deputy Ramirez interviewed him at 1:00 p.m. on January 31. Deputy Ramirez had learned that Daniel had been arrested on January 29 on an outstanding juvenile arrest warrant. He therefore admonished Daniel as to his constitutional rights before interviewing him. Daniel was aware of the outstanding arrest warrant prior to the incident.

Daniel remained in the hospital in an open jail ward for about two months. While there, his leg was chained to his bed. His leg was numb, and he could not feel the chain or move his leg. Because the open jail ward was not secured and was accessible to the public, all inmates in the ward were required to be chained to their beds.

Daniel and Melissa submitted a government tort claim to defendant on May 20, 2002. This claim stated: "Baldwin Park Police Officer shot and killed David Montanez and permanently wounded Daniel Montanez. As well as to cover up incident destroying evidence." It claimed the County was responsible because "Sheriff Homicide Investigation concealing facts of incident destroying evidence: District Attorneys Office." The claim was rejected by operation of law.

Melissa submitted a second government tort claim about June 12, 2002. This claim stated: "Ms. Montanez was falsely arrested on 01/29/02 and incarcerated for several days. (Booking # 716-4001). No charges were filed." It claimed the County was responsible because "LASD falsely arrested claimant."

DISCUSSION

A. *Standard of Review*

Summary judgment properly is granted if there is no question of fact and the issues raised by the pleadings may be decided as a matter of law. (Code Civ. Proc., § 437c, subd. (c); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) To secure summary judgment, a moving defendant may show that one or more elements of the cause of action cannot be established or that there is a complete defense to the cause of action. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar, supra,* at p. 849.) Once the moving defendant has met its burden, the burden shifts to the plaintiff to show that a triable issue of fact exists as to the cause of action or the defense thereto. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar, supra,* at p. 849.) All doubts as to the propriety of granting the motion are resolved in favor of the opposing party. (*Hamburg v. Wal-Mart Stores, Inc.* (2004) 116 Cal.App.4th 497, 502.)

On appeal, we exercise our independent judgment in determining whether there are no triable issues of material fact and the moving party thus is entitled to judgment as a matter of law. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334-335.) We must uphold the judgment if it is correct on any ground, regardless of the reasons the trial court gave. (*Biljac Associates v. First Interstate Bank* (1990) 218 Cal.App.3d 1410, 1419.)

B. *Plaintiffs' Burden on Appeal*

Although the decision of the trial court in a summary judgment ruling is reviewed independently, the review is limited to issues that have been adequately raised and supported in the appellant's brief. (See *Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6.) Rule 8.204(a)(1)(C) of the California Rules of Court requires that any statement in a brief concerning matters in the appellate record—whether factual or procedural and no matter where in the brief the reference to the record occurs—must be supported by "citation to the volume and page number of the record where the matter appears." References to factual or procedural matters without citation to the appellate record will be

disregarded. (*Yeboah v. Progeny Ventures, Inc.* (2005) 128 Cal.App.4th 443, 451; *Gotschall v. Daley* (2002) 96 Cal.App.4th 479, 481, fn. 1.) Neither will we consider any claim of error based on statements unsupported by record references. (*Weller v. Chavarria* (1965) 233 Cal.App.2d 234, 246.)

Additionally, in addressing an appeal we begin with the presumption that the judgment of the trial court is correct. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133; *Fleishman v. Superior Court* (2002) 102 Cal.App.4th 350, 357.) The appellants have the burden of showing reversible error by an adequate record. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574; *Robbins v. Los Angeles Unified School Dist.* (1992) 3 Cal.App.4th 313, 318.) Meeting the burden on appeal also requires citation to relevant authority and argument. (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545-546; *People v. Dougherty* (1982) 138 Cal.App.3d 278, 282.) It is not our responsibility to comb the appellate record for facts, or to conduct legal research in search of authority, to support the contentions on appeal. (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768; see also *Annod Corp. v. Hamilton & Samuels* (2002) 100 Cal.App.4th 1286, 1301.) The failure to meet this burden waives the issues on appeal. (*Mansell*, *supra*, at pp. 545-546; *Dougherty*, *supra*, at p. 282.)

Plaintiffs' brief contains numerous statements of fact devoid of supporting record references. We disregard these statements as well as claims of error based on them. (*Yeboah v. Progeny Ventures, Inc.*, *supra*, 128 Cal.App.4th at p. 451; *Weller v. Chavarria*, *supra*, 233 Cal.App.2d at p. 246.)

Additionally, the record designated by plaintiffs is inadequate to allow a de novo review.[1] Plaintiffs have failed to include their separate statement of undisputed and

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[1] Although plaintiff's failed to designate their complaint as part of the record on appeal, included as an exhibit in support of defendant's summary judgment motion is a copy of a proposed second amended complaint for damages, filed "on or about July 7, 2004" in the United States District Court for the Central District of California, naming as defendants the City of Baldwin Park, the Baldwin Park Police Department, Mark Kling, Holguin, and the County of Los Angeles. The parties represented at oral argument that this was the operative complaint. Inclusion of the complaint in the record on appeal is

disputed facts. In opposing a summary judgment, any evidence on which the plaintiffs wish to rely must appear in their separate statement of undisputed and/or disputed facts. (*United Community Church v. Garcin* (1991) 231 Cal.App.3d 327, 337.) If it does not appear there, "'*it does not exist*.'" (*Ibid*., italics in the original.) Absent plaintiffs' separate statement, we cannot determine whether plaintiffs presented sufficient evidence to demonstrate a triable issue of fact.

Bearing the foregoing principles in mind, we now turn to the issues plaintiffs raise on appeal.

C. *Plaintiffs' Contentions on Appeal*

1. Triable Issue Of Fact

Plaintiffs first contend that "there are triable issues of material facts pled in appellant's complaint." Specifically, they assert that they "have meritorious claims of, assault, battery, gross negligence, negligent hiring, and negligent supervision." The only citations to the record they provide to support this claim are to their argument in opposition to the summary judgment motion—which is not evidence—and a hearsay statement in Melissa's declaration to which defendant objected.[2] They also fail to cite any supporting authority. They thus have failed to meet their burden on appeal of

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essential, in that the determination whether summary judgment properly was granted requires us to identify "the issues framed by the pleadings, determine whether the moving party has negated the nonmoving party's claims, and determine whether the opposition has demonstrated the existence of a triable issue of material fact." (*Ohton v. Board of Trustees of California State University* (2007) 148 Cal.App.4th 749, 763.)

[2] The trial court specifically declined to rule on defendant's objections. Defendant preserved its objections by submitting written objections and a proposed order thereon, and by calling the court's attention to those objections during the hearing on the summary judgment motion. In making our determination as to whether there is a triable issue of fact, we therefore will consider only admissible evidence. (See *City of Long Beach v. Farmers & Merchants Bank* (2000) 81 Cal.App.4th 780, 784.) We note that the issue of preservation of evidentiary objections is currently before the Supreme Court in *Reid v. Google, Inc*. (2007) 155 Cal.App.4th 1342 (review granted Jan. 30, 2008, S158965).

showing the existence of evidence which creates a triable issue of fact as to the listed causes of action. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at p. 849.) This waives the claim. (*Mansell v. Board of Administration*, *supra*, 30 Cal.App.4th at pp. 545-546; *Weller v. Chavarria*, *supra*, 233 Cal.App.2d at p. 246.)[3]

Plaintiffs next claim the motion for summary judgment should have been denied as to their sixth cause of action. Their sixth cause of action was for negligence, based on sheriff's deputies placing Melissa in a patrol car at the scene of the shooting, the Sheriff's Department's failure to "investigate the matter," and the department's failure to take Melissa to the hospital for treatment for her cut lip. In support of their claim, the only citations to the record they include are to an inadmissible hearsay statements in Melissa's deposition, and they include no supporting authority. Again, the claim is waived. (*Mansell v. Board of Administration*, *supra*, 30 Cal.App.4th at pp. 545-546; *Weller v. Chavarria*, *supra*, 233 Cal.App.2d at p. 246.)[4]

Plaintiffs contend they have valid claims for negligent supervision and hiring. In support of this contention, they cite a report by an expert as to problems with the investigation of the shooting. They cite no evidence or authority supporting a finding that these problems were the result of negligent supervision or hiring. This waives the

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[3] Defendant asserts that causes of action for assault, battery and gross negligence were not included in plaintiffs' second amended complaint and therefore should be excluded from our consideration whether summary judgment properly was granted. It also asserts that the "facts" on which plaintiffs rely were not included in their separate statement of facts. Since plaintiffs have, in any event, failed to prove a triable issue of fact as to these causes of action, we need not address defendant's assertion.

[4] Again, we need not address defendant's assertion that this cause of action was not pled in the second amended complaint or their assertion that the supporting facts were not included in plaintiffs' separate statement of facts.

contention. (*Mansell v. Board of Administration*, *supra*, 30 Cal.App.4th at pp. 545-546; *Weller v. Chavarria*, *supra*, 233 Cal.App.2d at p. 246.)[5]

Plaintiffs further claim that they have "significantly plead their eighth cause of action for intentional infliction of emotional distress." Most of the facts plaintiffs cite in support of their argument are unaccompanied by citations to the record or authority and argument demonstrating that these facts establish a triable issue of fact as to an intentional infliction of emotional distress cause of action. As stated above, this waives the claim. (*Mansell v. Board of Administration*, *supra*, 30 Cal.App.4th at pp. 545-546; *Weller v. Chavarria*, *supra*, 233 Cal.App.2d at p. 246.)[6]

The same is true for negligent infliction of emotional distress, which plaintiffs contend "is a part of a negligence cause of action." This contention is based on inadmissible hearsay, facts unsupported by record references, speculation, and specious, unsupported claims, such as that defendant's use of a leg chain to secure Daniel to his bed in the open jail ward constituted corporal punishment and the unconstitutional infliction of cruel and unusual punishment without due process of law. The contention is waived. (*Mansell v. Board of Administration*, *supra*, 30 Cal.App.4th at pp. 545-546; *Weller v. Chavarria*, *supra*, 233 Cal.App.2d at p. 246.)[7]

Finally, plaintiffs claim they can "succeed in their prayer for punitive damages." They cite no supporting facts or authority. Additionally, they claim without supporting authority that the issue of entitlement to punitive damages cannot be resolved on

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5 We do not address defendant's assertions that this cause of action was not pled in the second amended complaint or that the supporting facts were not contained in plaintiffs' separate statement of facts.

6 Because plaintiffs' claim is waived, we need not address defendant's assertions that this cause of action was not based on the claims now made on appeal or that the supporting facts were not contained in plaintiffs' separate statement of facts.

7 Because the claim is waived, we need not address defendant's contentions that Daniel's cause of action was barred by the failure to include facts relating to his hospitalization in his tort claim or the facts on which plaintiffs' rely do not appear in their separate statement of facts.

summary judgment. Their claim is waived. (*Mansell v. Board of Administration*, *supra*, 30 Cal.App.4th at pp. 545-546; *Weller v. Chavarria*, *supra*, 233 Cal.App.2d at p. 246.)

2. Government Tort Claim

In granting defendant's summary judgment motion, the trial court ruled as follows: "While the second amended complaint names the County as a defendant, it is devoid of any factual allegations implicating liability of the County. It is silent as to the events raised in opposition to the subject motion.

"Even if those allegations were pled, the events described are outside of the scope of plaintiffs' claim presentation. [Citation.] The events described are based on an entirely different set of facts. They are not fairly reflected in the claims sufficient to serve the purpose of putting the County on notice. [Citations.] Even if plaintiffs had alleged the additional facts, they failed to comply with the Tort Claims Act."

As previously stated, plaintiffs have failed to demonstrate the existence of a triable issue of fact which would preclude the grant of summary judgment. We therefore need not address this additional basis for granting summary judgment.[8]

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[8] Defendant contends the appeal should be dismissed as to Melissa, in that her name does not appear on the notice of appeal. Inasmuch as defendant has addressed her contentions and has prevailed on the appeal, defendant would not be prejudiced were we to liberally construe the notice of appeal to include her as an appellant. (*Beltram v. Appellate Department* (1977) 66 Cal.App.3d 711, 715-716; see, e.g., *Chung Sing v. Southern Pacific Co.* (1918) 178 Cal. 261, 263-264.)

DISPOSITION

The judgment is affirmed. Defendant is to recover its costs on appeal.

NOT TO BE PUBLISHED

JACKSON, J.

We concur:

PERLUSS, P. J.

WOODS, J.